



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

etc., 112 Fed. 622, 629. Accepting such basis as sound, it appears that on the property theory there may be the same result. For the creation of such property right rests on contract. Now a possible construction of the contract, and one favored by the rule that a contract must be construed, if possible, to be within public policy, is that the restriction was to cover only private undertakings. Cf. 29 HARV. L. REV. 552. If such interpretation is rejected, the full operation of the contract would, by our premise, conflict with public policy. This may mean that the contract is void. But the contract may be good, and policy still prevent the creation of an equitable property right from it. *Norcross v. James*, 140 Mass. 188, 2 N. E. 946. In either case, there is no property right to award compensation for.

TAXATION — WHERE PROPERTY MAY BE TAXED — INHERITANCE TAX ON NON-RESIDENT PARTNER'S INTEREST IN LOCAL PARTNERSHIP REALTY. — The testator, a resident of New York, was a member of a partnership, which had a branch and owned realty in Pennsylvania. The partnership agreement provided that upon the death of one partner the other should carry on the business, paying to the estate of the deceased partner the value of his interest. On the death of the testator, Pennsylvania attempts to collect an inheritance tax on the testator's interest in the partnership property. The personal representatives of the testator were non-residents. *Held*, that the tax cannot be collected. *In re Arbuckle's Estate*, 97 Atl. 186 (Pa.).

Real property is taxable in the jurisdiction in which it is situated. *People v. Howell*, 106 App. Div. 140, 94 N. Y. Supp. 488. On the other hand, debts of whatever form are taxable at the domicile of the creditor. *Meyer v. Pleasant*, 41 La. Ann. 645, 6 So. 258; *Kirtland v. Hotchkiss*, 100 U. S. 491. Where a testator directs in his will that his realty be sold, such direction works an equitable conversion of the realty which is then taxable as personalty. *In re Smyth*, [1898] 1 Ch. 89; *In re Coleman's Estate*, 159 Pa. St. 231, 28 Atl. 137. *Contra*, *In re Swift's Estate*, 137 N. Y. 77, 32 N. E. 1096; *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350. The special agreement in the principal case would obviously have the same result. The doctrine of equitable conversion is not however essential to the decision of the case. The better view is that individual partners have no right to realty owned by the partnership, but only a right to its proceeds, i. e., a chose in action. *Kruschke v. Stefan*, 83 Wis. 373, 53 N. W. 679. But many jurisdictions allow a partition, if no debts are outstanding. *Molineaux v. Raynolds*, 54 N. J. Eq. 559, 35 Atl. 536. The special agreement in the principal case, however, would nullify the right, if any, to partition, which might otherwise have passed to the representatives of the testator. So on any basis they owned a chose in action, taxable only at their domicile.

TELEGRAPH AND TELEPHONE COMPANIES — DAMAGES FOR ERROR, DELAY, OR NON-DELIVERY — MEASURE OF DAMAGES WHERE TELEGRAM FORMED A COMPLETED CONTRACT. — The plaintiff sent a telegram by the defendant company accepting an offer for the sale of goods in reply to a telegram from the offeror. The defendant negligently failed to deliver the telegram, in consequence of which the offeror failed to fulfill his contract, and the plaintiff was forced to buy goods at an advanced rate. A statute provided that telegraph companies shall be liable for special damages caused by failure to deliver dispatches. 1909 REV. STAT. MO., § 3334. *Held*, that the plaintiff can recover the difference between the contract price and the market price. *Tippin v. Western Union Telegraph Co.*, 185 S. W. 539 (Mo.).

The delivery of the telegram to the defendant company completed the contract with the offeror. *Lungstrass v. German Ins. Co.*, 48 Mo. 201. Its negligence prevented the offeror from carrying out such contract. The injury to the plaintiff thus consists solely in having a reasonable expectation of performance

changed to a right of action at law. Many courts, in telegraph cases of this kind, have allowed recovery on the ground that such injury was legal damage. *Straus v. Western Union Tel. Co.*, 8 Biss. 104; *Squire v. Western Union Tel. Co.*, 98 Mass. 232; *Elam v. Western Union Tel. Co.*, 113 Mo. App. 538, 88 S. W. 115. *Contra, Kennedy Mercantile Co. v. Western Union Tel. Co.*, 167 S. W. 1094 (Texas). That such decision must accord with popular ideas of justice, is evident. Further, it prevents circuity of action, and has as precedent in other fields those cases that allow recovery for breach of contract maliciously induced by a third party. *Bowen v. Hall*, 6 Q. B. D. 333. The statute in the case, while not, as the court contended, determining what constitutes legal damage, affects the situation in determining the extent of the collectible damage. For in a contract action the damages are limited to those within the contemplation of the parties. *Melson v. Western Union Tel. Co.*, 72 Mo. App. 111. But in a tort action, which the statute appears to authorize, the damages will extend to any proximate consequences of the negligence. See **WOLF, LIABILITY OF TELEGRAPH COMPANIES**, 19, 31.

TENANCY IN COMMON—RIGHTS OF CO-TENANTS AGAINST EACH OTHER—RIGHT OF ONE CO-OWNER OF A COPYRIGHT TO RESTRAIN INFRINGEMENT BY THE OTHER. —A., co-owner with B. of a copyright, exercised the copyright privileges without the consent of B. B. seeks to enjoin him. A statute provides that “copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright.” 1911 GEO. V, sec. 2, subsec. 1. Held, that B. is entitled to an injunction. *Cescinsky v. Routledge & Sons, Ltd.*, [1916] 2 K. B. 325.

The words of the statute seem to be decisive of this case. Since the consent of the owner, *i. e.*, of both A. and B., was not obtained, A.’s actions must come within the definition of infringement. But aside from the statute, the decision is supported by analogies from the common law. For in the case of incorporeal hereditaments, the rights of one co-tenant were distinctly limited by the rights of the other. For instance, one co-parcener could not enjoy the right to an advowson to the exclusion of the other, but each took it in turn. *COMYN’S DIGEST*, tit. Advowson, A; *COKE UPON LITTLETON*, 164 b, (q). The same was true of a mill or piscary which descended to parceners. See *Powell v. Head*, [1879] 12 Ch. D. 686, 688. See *COKE UPON LITTLETON*, 165 a. Even in the rights of co-tenants of land the analogy holds. It is true that one tenant-in-common of land is entitled to the possession of the entire property. *Knox v. Silalloway*, 10 Me. 201; *Rising v. Stannard*, 17 Mass. 282; *Mumford v. Brown*, 1 Wend. (N. Y.) 53. And he can make a reasonable use of the common property, even if this involves waste. *Dodd v. Watson*, 4 Jones Eq. (N. C.) 48; *McCord v. Oakland Quicksilver Mining Co.*, 64 Cal. 134, 27 Pac. 863. But he cannot commit such waste as is destructive of the estate. *Leatherbury v. McInnis*, 85 Miss. 160, 37 So. 108. See 2 *STORY, Eq. JUR.*, § 916. The property in the principal case is a monopoly of production. Thus clearly production outside the monopoly is destructive of the fundamental property right of copyright. There is little direct authority, however, on the question of the rights of co-owners of a copyright against each other. One co-owner of a drama cannot, without the consent of the other, license a third person to produce it. *Powell v. Head, supra*. But in that case the question of the rights of co-owners *inter se* was expressly left open. And it has been held that the assignees of three of the four co-owners of a copyright may enjoin a stranger from infringing it. *Lauri v. Renad*, [1892] 3 Ch. 402. In the latter case, Kekewich, J., introduces an element of confusion by attempting to distinguish “part ownership” from tenancy in common and joint tenancy. This is a novel idea of ownership which has no basis in authority. But whether or no the rights in an incorporeal hereditament are